

MONTANA LEGISLATIVE HISTORY

Chapter 539 1985

Bill H _____ S 331 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 19 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 19 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 14 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 14 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

SENATE FINAL STATUS

3/11	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/14	FISCAL NOTE RECEIVED		
3/18	2ND READING PASS	37	10
3/20	3RD READING PASS	50	0

TRANSMITTED TO HOUSE
 3/21 REFERRED TO TAXATION
 3/25 HEARING
 DIED IN COMMITTEE

331 INTRODUCED BY CHRISTIAENS, REGAN, ET AL.
 PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION
 ORDERS
 BY REQUEST OF MONTANA HUMAN RIGHTS COMMISSION

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/14	HEARING		
2/14	COMMITTEE REPORT-BILL DO PASS		
2/16	2ND READING PASS	47	0
2/19	3RD READING PASS	44	0

	TRANSMITTED TO HOUSE		
2/27	REFERRED TO JUDICIARY		
3/19	HEARING		
3/19	COMM REPORT-BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	85	6
3/25	3RD READING CONCURRED	93	7

	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	50	0
4/12	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		

4/15	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 539 EFFECTIVE DATE:	4/18/85	

332 INTRODUCED BY TOWE, CRIPPEN, ADDY
 LIBRARY CONFIDENTIALITY ACT
 BY REQUEST OF SENATE JUDICIARY COMMITTEE

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/19	HEARING		
2/20	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/22	2ND READING PASS	48	1
2/25	3RD READING PASS	45	3

	TRANSMITTED TO HOUSE		
2/27	REFERRED TO JUDICIARY		
3/21	HEARING		
3/21	COMM REPORT-BILL CONCURRED AS AMENDED		
3/23	2ND READING CONCURRED	80	12
3/26	3RD READING CONCURRED	90	9

	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	50	0
4/04	3RD READING AMENDMENTS CONCURRED	50	0

Mr. Severson stated some of the language in it could be repealed. Senator Brown said it stated on Exhibit 2 you cannot serve as a delegate to a political party convention. He questioned whether this included the regional caucuses. Mr. Severson stated he believes they can participate in these. Senator Brown asked if they could go beyond the caucus. Mr. Severson stated no.

CLOSING STATEMENT: Senator Manning stated he worked for 24 years in the Great Falls Fire Department. When he first started, local restrictions required they had to adhere to certain rules and regulations. He felt it was a restriction on some of his rights guaranteed by the federal constitution. No matter what political party a federal employee belongs to, he should be entitled to this right.

Hearing on SJR 19 was closed.

CONSIDERATION OF SB 331: Senator Chris Christiaens, sponsor of SB 331, stated this bill was introduced at the request of the Human Rights Commission (see written testimony attached as Exhibit 3).

PROPOSERS: Anne MacIntyre, Administrator of the Human Rights Commission, appeared in support of this bill and stated the commission has requested this bill for purposes of clarification (see written testimony attached as Exhibit 4 and proposed amendments attached as Exhibit 5). Karl Englund, on behalf of the Montana Trial Lawyers Association and on behalf of himself personally, testified he has found the commission staff to be very good, quite overworked, and it takes a great deal of time for them to review cases under their normal statutory scheme. Any legislation that helps relieve a burden for the staff that can be handled by a private party allows the staff to be free for its own work. The problem simply is they are vastly overworked. If this will help eliminate some of those problems, it will be a step in the right direction. Mr. Englund stated he was going to suggest the same amendment as Ms. MacIntyre relating to injunctions so we have clear legislative intent that the court can exercise all of its powers in enforcing its orders. (See also written testimony submitted by Lorraine Gillis on behalf of the Montana Farm Bureau Federation in support of SB 313 attached as Exhibit 6.)

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked if when we talk about orders we are talking about the final order of the commission. Ms. MacIntyre responded yes. Senator Crippen asked if this commission is a quasi-judicial body. Ms. MacIntyre responded yes. Senator Crippen asked if this practice were consistent with other such bodies created in the law. Ms. MacIntyre responded she hasn't researched that particular

question. It is her understanding that quasi-judicial bodies that have to look to courts for enforcement of their orders. Mr. Englund stated the commission is different from most boards which we have in the state because it involves disputes between private citizens. At the end of that, you end up with an order where the state of Montana is not a party. Senator Mazurek asked if this would save the commission any money. Ms. MacIntyre responded she doesn't feel they will save any money. When they receive an enforcement action, it is something they must juggle in and make the time to do while something else sits on the back burner. She believes the only savings would be the staff resources. Senator Mazurek asked if this saves staff time, which is in effect money. Ms. MacIntyre responded yes. Senator Mazurek asked why they needed the effective date. Ms. MacIntyre stated she felt the immediate effective date was appropriate because it would clarify that all of the existing cases before the commission would fall within this change. They have about 300 open cases right now. Removing the effective date would defeat some of the purpose. Senator Mazurek asked if she really felt the amendments were necessary. Mr. Englund stated the amendments don't add any additional power to the courts. Senator Mazurek asked the same question about the word "party." Mr. Englund stated he had no problem with party. Senator Mazurek stated by deleting, we do not intend to eliminate the remedy of injunction.

CLOSING STATEMENT: Senator Christiaens stated he believes this bill is necessary as it will change something that is currently required by the commission to do by placing that responsibility on the party in whose favor the order has been entered. The cost savings would be in the commission's being relieved of this and being able to address some of that backlog of cases.

Hearing on SB 331 was closed.

ACTION ON SB 331: Senator Mazurek stated only a "party" can bring an action. Senator Crippen asked about third parties. Senator Mazurek stated a third person is not a party to the action. An amicus curiae is a friend of the court, but he is not a party. Senator Mazurek questioned why we need to inject some new term in here when it is already defined in the law. Senator Blaylock moved SB 331 be recommended DO PASS. Senator Mazurek questioned whether we needed the effective date. Mr. Petesch stated if we remove the immediate effective date, we still have the problem of the statute's providing only for an injunction up until the effective date. The motion carried unanimously.

FURTHER CONSIDERATION OF SB 313: Senator Mazurek stated he would move on order of business No. 6 that SB 313 be printed and placed on second reading with no recommendation whatsoever. Senator Shaw stated if you

Remarks of Senator Christiaens:

Senate Bill 331 is introduced at the request of the Human Rights Commission to clarify the provisions of law that govern proceedings to enforce orders of the Commission. Under present law, if the Commission issues an order in a contested case and one of the parties refuses to comply, the Commission staff is required to bring an action to enforce the order. The Commission does not object to having its staff bring actions to enforce its orders in appropriate cases, such as those cases where the Commission's order enjoins a practice forbidden by law. The Commission does object to the use of its staff for what amounts to private collection activity of back pay awards and seeks the passage of this bill to insure that such an enforcement proceeding can be initiated by the prevailing party in the case before the Commission. The bill would also permit the Commission staff to bring an enforcement proceeding when it is deemed appropriate.

Strike the phrase

In addition, this bill would clarify what might be construed to be a conflict in the laws administered by the Commission. Sections 49-2-506 and 49-3-309, MCA, give the Commission authority to award monetary damages, such as back pay. Sections 49-2-508 and 49-3-311, MCA, state that an order of the Commission can be enforced "by injunction." It is unclear how an order to pay monetary damages can be enforced by injunction. The Commission seeks this amendment to the law so that its orders can be enforced by any appropriate order of the district court.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 021485
BILL NO. SB 331

Clarification of these statutes by the legislature will relieve the Commission staff of responsibilities which are more properly placed with the party in whose favor the Commission has entered an order.

Furthermore, the legislature can eliminate the ambiguity inherent in limiting the enforcement power of courts to enforcement "by injunction", thereby avoiding future litigation to obtain clarification. I encourage your favorable consideration of Senate Bill 331.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 021485
BILL NO. SB 331

Testimony of Anne L. MacIntyre in support of SB 331

Chairman Mazurek, members of the Committee: I am Anne MacIntyre, administrator of the Human Rights Division. I am here today in support of SB 331.

The Human Rights Commission has requested the amendment of sections 49-2-508 and 49-3-311 for purposes of clarification.

In each instance in the past year in which the Commission staff has initiated an enforcement proceeding, the only matter at issue was the failure of the Respondent to pay a monetary award. While there have been only three such actions filed by the Commission staff in that year, it somehow seems inappropriate that the limited energies and resources of the Commission staff should be expended to enforce money judgments for private individuals. The Commission is strongly interested in seeing that its orders are enforced but, in the typical case, where the Commission finds that an individual has been discriminated against but there is no apparent ongoing pattern or practice of discrimination, the Commission believes there is sufficient private incentive to insure enforcement of a monetary award.

In addition, the Commission is concerned about the use of the phrase "by injunction" in these enforcement provisions and asks that the legislature clarify these provisions by striking the phrase "by injunction." It would be truly unfair and unfortunate for a person to

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE

021485

pursue his or her case all through the contested case process established by law for hearing before the Commission, then be forced to litigate the question of whether a court could enforce an award by the Commission of affirmative relief such as reinstatement or back pay. While the equities in such a scenario would seem to favor the person attempting to enforce the order, and I find it difficult to imagine a court refusing to enforce such an order, my own philosophy of statutory constitution favors elimination of statutory ambiguities by the legislature rather than interpretation by the courts.

Since this bill was introduced, I have received several comments from others who have suggested some minor amendments. I have drafted proposed amendments for your consideration.

First, I was asked whether any person would be considered "a party" who could enforce a Commission order. This was not my intent in drafting this bill. Since sections 49-2-508 and 42-3-311 are part of a statutory scheme involving the rights and remedies of parties to a case, I felt it would be clear from the context who "a party" is. By adding the words "to a case before the Commission", the section is clarified further.

Second, it was suggested to me that if the phrase "by injunction" were stricken someone might argue that the legislature intended to eliminate the power of the court to utilize injunctions. This matter is clarified by the addition of the words "by any appropriate order."

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 021485

BILL NO. SB 331

Mr. Chairman, I thank the committee today, and I urge that you recommend SB 331 do pass. I will be happy to answer any questions you may have.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 02/4/85

BILL NO. SB 331

Proposed amendments, SB 331
First reading copy

Page 1, line 16
Following: or a party
Insert: to a case before the commission

Page 1, line 20
Following: ~~by any appropriate order~~
Insert: by any appropriate order

Page 1, line 24
Following: or a party
Insert: to a case before the commission

Page 2, line 3
Following: ~~by any appropriate order~~
Insert: by any appropriate order

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 021485

BILL NO. SB 331

STANDING COMMITTEE REPORT

February 14

19⁸⁵

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 331

first reading copy (white)
color

PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS.

Respectfully report as follows: That JUDICIARY No. 331

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek

Chairman.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 19, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, March 19, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Brown and Krueger who were excused.

CONSIDERATION OF SENATE BILL NO. 331: Senator B.F. "Chris" Christiaens, Senate District #17, chief sponsor of SB 331, told the committee that this bill was introduced at the request of the Human Rights Commission. This bill will permit private enforcement of orders of the Human Rights Commission and clarify the authority of the district court when enforcing an order of the Commission. Under present law, if the Commission issues an order in a contested case and one of the parties refuses to comply, the Commission staff is required to bring an action to enforce the order. Passage of this bill will relieve the staff which is really very small at this particular point, and it will allow people to go ahead and collect on the judgment due them without having to go back through the Commission in order to have the order enforced.

Karl Englund, representing the Montana Trial Lawyers' Association, testified as a proponent. He said that he has worked with the Human Rights Commission on a number of cases. One of the frustrating parts of the process is the fact that it is a very slow process. Most cases involved a rather lengthy fact finding on the part of the Commission. By the time the Commission has investigated a particular case and found reasonable cause to believe there is discrimination, the case has then gone to the full Commission for a contested case hearing. This bill will relieve the Commission of some of the duties and therefore, make their staff better able to do some of the things that only they can do.

Anne L. MacIntyre, administrator of the Human Rights Division, testified in support of the bill. A copy of her written testimony was marked Exhibit A and attached hereto.

There being no further proponents or opponents, Senator Christiaens closed.

The floor was opened to questions.

In response to a question asked by Rep. Rapp-Svrcek, Ms. MacIntyre said the Commission filed only three enforcement orders in the past year.

Rep. Keyser asked Sen. Christiaens where the definition of "or a party" came from. Sen. Christiaens said his interpretation of a "party" could mean a person or an individual. Ms. MacIntyre said the two sections that are at issue here and that they are asking to be amended are part of the statutory scheme that refers to the handling of cases before the Commission. It is pretty clear within that scheme that a party is a party to the case actually before the Commission. She informed the committee that during a discussion in the Senate Judiciary Committee, the committee did not feel there were grounds to argue that a party is anyone other than a party to the case. Rep. Keyser wanted to know the section of law that defines what a party is. Ms. MacIntyre said the word "party" is not defined in any other section. But, she thinks the other provision in part 5, title 49, chapter 2 and part 3 of title 49, chapter 3 -- it is pretty clear that we are dealing with the wording of the case all the way through the commission process. Rep. Keyser wanted to know if the word "claimant" is used in there too. Ms. MacIntyre said she doesn't think it is.

Rep. Hannah asked if he, as a claimant, wanted to file a case, may he go directly to district court or must he go through the Commission. Ms. MacIntyre said no, a claimant may not go directly to the district court. The statutory remedy that is set forth appears to be an exclusive remedy, so the claim must be filed through the Commission. Rep. Hannah asked if he filed his complaint with the Commission and he ended up unhappy with the Commission's decision, then may he go to district court? Ms. MacIntyre said "yes." She said there is a two-stage process which she further expounded on. In response to another question asked by Rep. Hannah, Ms. MacIntyre said that if an individual has a hearing before the Commission and the Commission issues an order, and that order is appealed to district court for judicial review, the district court will review what the Commission has done to determine whether the Commission acted properly in making its decision -- but the court will not try the matter on its merits.

In response to a question asked by Rep. Mercer, Ms. MacIntyre said it was her opinion that unless an individual (who is involved with a case and questions the Commission's decision) seeks judicial review of the Commission's order that the person either stops from relitigating the case in an enforcement proceeding.

Rep. Mercer said another problem he had is that it seems to him that the court is not being granted any specific authority. You are not telling the court how to decide what it is supposed to do. There is no operative language in this particular section. Ms. MacIntyre said it is important that there be some sort of enforcement scheme in place. Unlike a court, the Commission cannot enforce its own orders. She feels that it may not be necessary to spell out the exact authority of the court. The court assumes if the Commission has issued an order, and that

order has not been appealed, it would be proper for the court to comply with the request for enforcement.

There being no further questions, hearing closed on SB 331.

CONSIDERATION OF SENATE BILL NO. 327: Senator Bob Brown, Senate District #7, testified as chief sponsor on behalf of SB 327. This bill is an attempt to deal with the problem of people who illegally pass school buses. He said this is one of the largest problems in Montana today in the area of school safety. Senator Brown said that when Rep. Eudaily researched this issue during the last session, he found out that there was one school district that reported 10 or 12 cases of this type of problem every week. It is a common problem, and it is a very difficult problem to do anything about due to the difficulty of identifying the drivers of those vehicles. Under this bill, the owner of a vehicle would be held responsible for the violation and would be penalized accordingly. He feels the bill may provide a deterrent, also.

Rep. Richard Nelson testified as a proponent on behalf of the transportation director for School District #6 in Kalispell and the school superintendent of the Kalispell school district. He said there have been numerous close calls in this area in the Kalispell region. He feels that it is certainly proper for the owner of the vehicle to be held responsible for the actions of those who he allows to use the vehicle. He informed the committee that just recently he personally witnessed a scene when a car passed a school bus with flashing lights.

Rick Bartos, representing the Office of Public Instruction, testified as a proponent. He said that they have been attempting for many years to rectify this problem. He said that this particular legislation has probably gone through more scrutiny than most legislation. He said his office has been working closely with the Attorney General's Office in developing the language in the bill. There are three key elements that should be looked at that will ensure due process and fairness if there is a question of review in court. First, is the amendment the Senate put into the bill that indicates there will be no prosecution unless the identity of the driver is unknown. The second key provision is the punitive area in which the person, if he is convicted of this particular offense, will serve no jail term -- it is simply a monetary fine up to \$500. Finally, the supreme court has said in traffic regulation, the legislature has the ability to use their discretion. The supreme court gives great deference to that discretion. This particular piece of legislation deals with traffic regulation.

Terry Brown, specialist for Pupil Transportation Safety, Office of Public Instruction, testified in support of the bill. He spoke on behalf of all the school bus drivers of the state of Montana who have an ongoing problem of giving positive

Rep. Keyser said that §61-8-405, MCA, deals only with the physician or registered nurses act being at the request of the peace officer. They have only stricken "under the supervision direction of a physician or nurse acting within the scope of such person's competence." Wouldn't proper administering basically be within the scope of their competency?

Rep. Addy said that he would argue if he were representing a client in this situation that proper means consensual. By putting the second sentence on, we really narrow the scope of the first sentence.

Without objection, action on this bill will be postponed.

ACTION ON SENATE BILL NO. 331: Rep. Cobb moved that SB 331 BE CONCURRED IN. The motion was seconded by Rep. Montayne.

Rep. Mercer moved to adopt the amendments submitted by Anne MacIntyre at the hearing. The motion was seconded by Rep. Keyser and carried unanimously. (See standing committee report for those amendments.)

Rep. Darko moved that SB 331 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Bergene.

Rep. Keyser said that he didn't like the language on line 16 of the bill, "or a party". He feels this leaves it wide open and feels that it is too broad.

The question was called, and the motion carried with Reps. Hannah and Keyser dissenting. Rep. Connelly will carry the bill.

ACTION ON SENATE BILL NO. 89: Rep. Mercer moved that SB 89 BE CONCURRED IN. The motion was seconded by Rep. Darko. Rep. Mercer moved to amend SB 89 by incorporating the "gray bill" which was marked as Exhibit C and attached hereto. The motion was seconded by Rep. Gould. Rep. Mercer explained to the committee the changes that were incorporated into the "gray bill".

Rep. Addy feels that the gray bill may do exactly the opposite of what the original bill does.

The question was called on the motion to adopt the amendments as made on the gray bill, and it carried on a voice vote. Rep. Darko further moved that SB 89 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. O'Hara.

One of the committee members wanted to know if Sen. Mazurek was contacted and apprised of these amendments. Rep. Mercer said that he had consulted with Sen. Mazurek and the Senator had
with the amendments.

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/19/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger			✓
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Raap-Svrcek	✓		

STANDING COMMITTEE REPORT

March 19 19 85

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 331

Third reading copy (Blue)
color

PRIVATE ENFORCEMENT OF HUMAN RIGHTS COMMISSION ORDERS

Senate 331
Respectfully report as follows: That..... Bill No.....

be amended as follows:

1. Page 1, line 20.
Following: "by-injunction"
Insert: "by any appropriate order"

2. Page 2, line 3.
Following: "by-injunction"
Insert: "by any appropriate order"

AND AS AMENDED.
BE CONCURRED IN
DO PASS

REP. TOM FARMER, Chairman.

Testimony of Anne L. MacIntyre in support of SB 331

Chairman Hannah, members of the Committee: I am Anne MacIntyre, administrator of the Human Rights Division. I am here today in support of SB 331.

The Human Rights Commission has requested the amendment of sections 49-2-508 and 49-3-311 for purposes of clarification.

In each instance in the past year in which the Commission staff has initiated an enforcement proceeding, the only matter at issue was the failure of the Respondent to pay a monetary award. While there have been only three such actions filed by the Commission staff in that year, it somehow seems inappropriate that the limited energies and resources of the Commission staff should be expended to enforce money judgments for private individuals. The Commission is strongly interested in seeing that its orders are enforced but, in the typical case where the Commission finds that an individual has been discriminated against and there is no apparent ongoing pattern or practice of discrimination, the Commission believes there is sufficient private incentive to insure enforcement of a monetary award.

In addition, the Commission is concerned about the use of the phrase "by injunction" in these enforcement provisions and asks that the legislature clarify these provisions by striking the phrase "by injunction." It would be truly unfair and unfortunate for a person to

pursue his or her case all through the contested case process established by law for hearing before the Commission, only to be forced to litigate the question of whether a court could enforce the Commission's award of affirmative relief such as reinstatement or back pay. While the equities in such a scenario would seem to favor the person attempting to enforce the order, and I find it difficult to imagine a court refusing to enforce such an order, my own philosophy of statutory construction favors elimination of statutory ambiguities by the legislature rather than interpretation by the courts.

Mr. Chairman, I thank the committee for hearing this matter, and I urge that you recommend SB 331 do pass. I will be happy to answer any questions you may have.